IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3963 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEMANT RAMBHAI MADAM AND LEGAL REPRES.

Versus

AK MEHTA OR SUCCESSOR COMPT AUTHORITY AND SAFEMA/

Appearance:

1. Special Civil Application No. 3963 of 1999

MR RS SANJANWALA for Petitioner No. 1-1/7

MS MANISHA LAVKUMAR with Mr Dhaval Barot, Addl. Central Government Standing Counsel for Respondents No. 1 & 2

Mr A D Oza, Govt.Pleader for the State of Gujarat

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 22/04/2004

ORAL JUDGEMENT

This matter was heard along with Special Civil Application No.3962 of 1999. It has been contended that the detention order against Hemantbhai R Madam dated 25.8.1975 was also the subject matter of Special Civil Application No.3962/1999. It has also been contended that the notice under section 6(1) of Smuggling and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (for short, 'SAFEMA') was issued on the aforesaid detention order. It has also been contended that final order under section 7 of the Act dated 29.6.1998 was also based on the aforesaid notice passed under section 6(1) and even the order dated 25.8.1975 against deceased Ghelubhai R Madam was also the subject matter of the earlier petition in Special Civil Application No.3962/99. Therefore, it is the say of the petitioners that the subject matter of this petition was also a subject matter of Special Civil Application No.3962 of 1999.

2. The said petition has been allowed today and the detention order which is impugned in this petition was also impugned in the said petition and it has been struck down by this Court. Even notice under section 6(1) and consequential order under section 7 of SAFEMA on identical consideration have also been struck down by this Court. When the said matter and the present matter are identical, then in that event, for the reasons recorded in the said petition, this petition will also be required to be allowed and the order of detention and consequential orders passed under sections 6(1) and 7 of SAFEMA will also be required to be quashed and set aside. Therefore, for the reasons recorded in the judgment and order passed today in Special Civil Application No.3962 of 1999, this petition is required to be allowed.

2. For the foregoing reasons and for the reasons stated today in judgment in Special Civil Application No.3962 of 1999, the present petition is allowed. The impugned order of detention dated 25.8.1975 passed under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 against deceased detenu-Hemantbhai Rambhai Madam placed at Annexure 'B' and notice under section 6(1) of the Smuggling and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 placed at Annexure 'D' to the petition and the order passed on 29.6.1998 under section 7 of that Act and placed at Annexure 'E' to the petition, are hereby quashed and set aside. Rule is made absolute to the aforesaid extent. No order as to costs. D.S.

permitted.

3. The Addl.Standing Counsel for the respondent states that with a view to enable the respondents to approach the Court in appeal, the petitioner be directed to maintain status-quo for eight weeks.

After hearing, it is directed that the petitioners shall maintain status-quo, as on today, in respect of the subject matter of the petition, for a period of four weeks from today.

[D P Buch, J.]

msp